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09/997,310	11/28/2001	John T. Ziegenhorn	ZIEG.001A	4415

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MC CLOUD, RENATA D

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER  
2837

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/997,310

Applicant(s)

ZIEGENHORN ET AL.

Examiner

Renata McCloud

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 28 November 2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5,7-15 and 17-26 is/are rejected.

7) Claim(s) 6,16 and 27-35 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claims 27-35 are objected to because of the following informalities: The specification describes an adjustable crossbar support arm for supporting a motor, however the claims refer to a support beam. The terminology needs to be consistent. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

*withdrawn*

3. Claim 18 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a motor being removable from the cover, does not reasonably provide enablement for a motor being removed from the grilling surface. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to understand the invention commensurate in scope with these claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 7, 9, 11, 12, 17, 18, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickson (U.S. Patent 5,341,727).

Dickson teaches:

Claim 1: an apparatus for controlling the opening of a cover over a grilling surface comprising a motor coupled to the cover (e.g. Fig. 1, #101), the motor adjusting the opening between the cover and the grilling surface (e.g. Fig. 1, # 91; Column 6:36-39).

Claims 2 and 17: a counterweight attached to the rear of the cover (e.g. Fig. 2, #81 being part of counter weight system).

Claims 7 and 18: the apparatus for opening a cover of a grilling surface is removable (e.g. Fig. 1, #101 can be removed).

Claims 9 and 20: the motor stops movement of the cover at a point within a full range of the cover movement (e.g. Column 6:36-47).

Claim 11: the grilling surface is a combustible gas fueled barbecue grill (e.g. Column 2:23).

Claims 12 and 21: a cooking apparatus comprising a grilling surface (e.g. Fig. 1, #43B), a cover that provide adjustable opening over the grilling surface (e.g. Fig. 1, #43A), and a motor coupled to the cover to adjust the opening between the cover and the grilling surface (e.g. Fig. 1, #101)

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5,13-15, and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson as applied to claims 1, and 21 above, in view of Mullet et al (U.S. Patent 6,326,754).

Dickson teaches the limitations of claims 1 and 21, however, Dickson does not teach:

Claims 3, 13, and 22: a remote control for transmitting control signals to the motor; Claims 4 and 14: the remote control transmits start and stop signals; Claims 5 and 15: the motor only operates during the transmission of control signals to the motor;

Claims 7 and 18: the apparatus is removable from the cover; Claim 23: a method of controlling the opening of a cover over a grilling surface comprising causing a motor to operate upon receiving a first signal and causing the motor to stop operating upon receiving a second signal; Claim 24: activating a first control generates the first signal; Claim 25: releasing the first control generates a second signal; or Claim 26; activating a second control generates a second signal.

Mullet et al teach:

Claims 3, 13, and 22: a remote control for transmitting control signals to the motor (e.g. Fig. 2, #70);

Claims 4 and 14: the remote control transmits start and stop signals (e.g. Fig. 1, #16);

Claims 5 and 15: the motor only operates during the transmission of control signals to the motor (e.g. Column 4:30-35);

Claims 7 and 18: the apparatus is removable from the cover (e.g. Column 4:21-25);

Claim 23: a method of controlling the opening of a cover over a grilling surface comprising causing a motor to operate upon receiving a first signal and causing the motor to stop operating upon receiving a second signal (e.g. Column 7:44-48);

Claim 24: activating a first control generates the first signal (e.g. Column 7:44-48);

Claim 25: releasing the first control generates a second signal (e.g. Column 7:44-48);

Claim 26; activating a second control generates a second signal (e.g. Column 7:44-48);

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus taught by Dickson, to include the door opening apparatus taught by Mullet et al. The advantage of this would be a grill that has a

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cover that is remote control operated, thus allowing a user to open the grill from a distance away from the grill.

10. Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson as applied to claims 1, and 21 above, in view of Fitzgibbon et al (U.S. Patent 6,400,112).

Dickson teaches the limitations of claims 1 and 21, however, Dickson does not teach a battery-powered motor. Fitzgibbon et al teach a door opening apparatus with a motor that is battery-powered (e.g. Column 13:18-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus taught by Dickson to include a battery powered motor. The advantage of this would be a motor that is operable during any type of power outage.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson (U.S. Patent 5,341,727), in view of Valentino (U.S. Patent 5,850,828).

Dickson teaches the apparatus of claim 1, however Dickson does not teach a grilling surface that is a charcoal briquette fueled barbecue grill. Valentino teaches this (e.g. Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus taught by Dickson to include a charcoal briquette fueled grilling surface. The advantage of this would be the ability to use the grill whenever gas is unavailable.

*Allowable Subject Matter*

12. Claims 6 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: none of the above mentioned references teach a remote control that transmits signals to control the flow of a combustible fuel.

Claims 27-35 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: none of the references mentioned above teach a motor support beam having an adjustable length, the motor support beam having a motor attachment surface for attachment to the motor and at least one base attachment surface for attachment to a support base of the grilling surface.

*Conclusion*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renata McCloud whose telephone number is (703) 308-1763. The examiner can normally be reached on Mon.-Thurs and every other Fri. from 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on (703) 308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Renata McCloud  
Examiner  
Art Unit 2837

RDM  
December 19, 2002



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